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DANIEL S. POLLEY, P.A.
7251 WEST PALMETTO PARK ROAD
SUITE 202
BOCA RATON, FL 33433

EXAMINER

BOYCE, ANDRE D

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
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8 *Ex parte* RENEE FRENGUT
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11 Appeal 2010-000049
12 Application 09/883,590
13 Technology Center 3600
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16 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and ANTON W.
17 FETTING, *Administrative Patent Judges*.
18 FETTING, *Administrative Patent Judge*.

19 DECISION ON APPEAL¹
20

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE²

Renee Frengut (Appellant) seeks review under 35 U.S.C. § 134 (2002) of a non-final rejection of claims 2-4, 6, 8-9, 11, 19-20, 23, 27-31, 34, 37-39, 43, and 53, the only claims pending in the application on appeal. We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

The Appellant invented qualitative market research methods and systems conducted over a distributed computer network wherein the market research participants have been dynamically chosen so as to ensure that the final pool of market research participants most closely resembles the consumer or potential consumer base the sponsoring company wishes to probe. Specification 1:3-7.

An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below [bracketed matter and some paragraphing added].

1. A method for conducting a live study over the Internet with one or more participants, said method comprising the steps of:
 - (a) selecting one or more individuals for a specific online live study being held at a website on the Internet at a certain time:

² Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed June 4, 2009) and Reply Brief ("Reply Br.," filed March 24, 2008), and the Examiner's Answer ("Ans.," mailed January 25, 2008).

(b) providing each individual with sign-in information for the specific online live study:

(c) selecting a moderator for conducting the specific online live study, wherein the one or more individuals are selected based on their willingness to participate in the live online study and not based on any business relationship or business connection of the one or more participants with the moderator, said moderator and said one or more individuals independent from each other and not from a same organization or business entity;

(d) providing each of said one or more individuals and said moderator with an audio/video capture mechanism that is connectable to a machine that permits live audiovisual two-way images and communication across the Internet between said moderator and said one or more individuals;

(e) permitting said one or more individuals to participate in the specific online live study by allowing said one or more individuals to access the specific online live study by using their sign-in information at the website; and

(f) conducting the specific online live study at the website by capturing live video images of the individuals and moderator and live audio two way communications between and among the individuals and between and among the individuals and the moderator based on questions asked or stimuli shown by the moderator to the individuals over the Internet.

The Examiner relies upon the following prior art:

Ludwig	US 6,237,025 B1	May 22, 2001
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Davis	US 6,256,663 B1	Jul. 3, 2001
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Thomas	US 2002/0002482 A1	Jan. 3, 2002
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e-FocusGroups Qualitative Market Research,
<http://web.archive.org/web/20001018020658/www.e-focusgroups.com>,
(last visited Mar. 5, 2000). (“e-Focusgroups.com”)

1 Claims 1, 7, 12-13, 16, 18, 21-22, 24-26, 32-33, 35-36, 40-42, 44-52,
2 and 54-58 stand rejected under 35 U.S.C. § 103(a) as unpatentable over
3 Ludwig and e-Focusgroups.com.

4 Claims 5 and 14 stand rejected under 35 U.S.C. § 103(a) as unpatentable
5 over Ludwig, e-Focusgroups.com, and Thomas.

6 Claims 10, 15, and 17 stand rejected under 35 U.S.C. § 103(a) as
7 unpatentable over Ludwig, e-Focusgroups.com, and Davis.

8

9 ISSUES

10 The issue of whether the Examiner erred in rejecting claims 1, 7, 12-13,
11 16, 18, 21-22, 24-26, 32-33, 35-36, 40-42, 44-52, and 54-58 under 35 U.S.C.
12 § 103(a) as unpatentable over Ludwig and e-Focusgroups.com turns on
13 whether there is a motivation to combine Ludwig and e-Focusgroups.com
14 and whether the Appellant's secondary evidence is sufficient to rebut the
15 Examiner's *prima facie* case of obviousness..

16 The issue of whether the Examiner erred in rejecting claims 5 and 14
17 under 35 U.S.C. § 103(a) as unpatentable over Ludwig, e-Focusgroups.com,
18 and Thomas turns on whether there is a motivation to combine Ludwig, e-
19 Focusgroups.com, and Thomas.

20 The issue of whether the Examiner erred in rejecting claims 10, 15, and
21 17 under 35 U.S.C. § 103(a) as unpatentable over Ludwig, e-
22 Focusgroups.com, and Davis turns on whether the Appellant's arguments in
23 support of claim 22 are found to be persuasive.

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FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Ludwig

01. Ludwig is directed to computer-based systems for enhancing collaboration between and among individuals who are separated by distance and/or time. Ludwig 1:12-15.

02. Ludwig describes a teleconferencing system that uses real-time audio and/or video teleconferencing. Ludwig 4:58-65. A plurality of multimedia local area networks (MLAN) connects a plurality of collaborative media workstations (CMW) to provide audio/video/data networking among CMW users. Ludwig 5:65-67 and 6:1-5. An initiating CMW identifies desired conference participants and conferees accept the call. Ludwig 8:66-67 and 9:1.

e-Focusgroups.com

03. e-Focusgroups.com is directed to online qualitative research using online focus groups. e-Focusgroups.com ¶ 1.

04. e-Focusgroups.com describes the use of a DSL line where respondents from all over the world access a site that is secure such that only invited participants can participate. e-Focusgroups.com ¶'s 2 and 13. Qualitative modalities used for research include focus groups, telephone interviews, web-based

1 online focus groups, and email and phone surveys. e-
2 Focusgroups.com ¶'s 11-12. Sessions can also be conducted with
3 access to research facilities that are set up for remote video. e-
4 Focusgroups.com ¶ 14. Services include identifying target
5 market/respondents, developing the moderator's interview guide,
6 moderating the focus groups, and providing audiotaping and/or
7 videotaping. e-Focusgroups.com ¶ 15.

8 *Thomas*

9 05. Thomas is directed to more efficient and effective survey
10 systems, methods, and businesses. Thomas ¶ 0003. Thomas is
11 concerned with effective, less cumbersome methods of conducting
12 surveys. Thomas ¶ 0009. Thomas describes a system that
13 receives a survey in an electronic format, selects a group of
14 registered participants to participate in the survey, distributes the
15 survey to the participants, electronically receives responses to the
16 survey from the participants, and processes the results of the
17 survey. Davis ¶ 0012. Incentives are provided to potential survey
18 participants to motivate them to participate. Davis ¶ 0029.
19 Incentives include sweepstakes offer, free services, money,
20 coupons, frequent flyer miles, and the like. Davis ¶ 0029.

21 *Davis*

22 06. Davis is directed to conducting focus groups using remotely
23 located participants who are communicating over a computer
24 network. Davis 1:8-11.

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ANALYSIS

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*Claims 1, 7, 12-13, 16, 18, 21-22, 24-26, 32-33, 35-36, 40-42, 44-52,
and 54-58 rejected under 35 U.S.C. § 103(a) as unpatentable over Ludwig
and e-Focusgroups.com*

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The Appellant first contends that Ludwig fails to describe conferencing over a public network such as the Internet. App. Br. 10-11. The Appellant further argues that Ludwig describes a LAN/WAN operated by the business entity, not by a separate independent entity and therefore non-employees do not have access to the Ludwig system. App. Br. 12-13 and Reply Br. 1-2. We disagree with the Appellant. The Examiner found that e-Focusgroups.com describes a web-based online focus group research system. Ans. 5-6. e-Focusgroups.com describes that respondents from all over the world access a private and secure site to conduct focus group research, where respondents can access the site using a DSL connection. FF 04. This suggests that the focus group is conducted over a public network. As such, the Appellant's contention does not persuade us of error on the part of the Examiner because the Appellant is responding to the rejection by attacking the references separately, even though the rejection is based on the combined teachings of the references. Nonobviousness cannot be established by attacking the references individually when the rejection is predicated upon a combination of prior art disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986). The Appellant also contends that the Examiner has misconstrued the term "focus group" and Ludwig fails to describe the common meaning of a "focus group." Reply

1 Br. 1-2. However, the claims only require a “live study.” As such, this
2 argument is not found to be persuasive since the Appellant is arguing
3 limitations not found in the claims.

4 The Appellant further contends that there is no motivation to combine
5 Ludwig and e-Focusgroups.com and e-Focusgroups.com teaches away from
6 conducting an audio/visual live study on the Internet. App. Br. 10-11. The
7 Appellant further argues that a person with ordinary skill in the art has not
8 combined the feature of Ludwig and eFocusgroups.com and therefore the
9 combination is not obvious. App. Br. 11-12. The Appellant also argues
10 since Ludwig describes ensuring information remains internal and secure, a
11 person with ordinary skill in the art would not be motivated to block certain
12 participants from hearing the communications of other participants. App.
13 Br. 13. We disagree with the Appellant. Both Ludwig and e-
14 Focusgroups.com are concerned with providing a secure system for
15 collaboration and research through the use of computers. FF 01-04. Ludwig
16 solves this problem by providing a secure system that allows a moderating
17 computer to contact and collaborate with other participants. FF 02. e-
18 Focusgroups.com addresses this concern by describing a secure system that
19 allows audio/visual communication between a moderator and participants.
20 FF 04. A person with ordinary skill in the art would have found it obvious
21 to combine the use of the Internet described by e-Focusgroups.com with
22 Ludwig’s collaboration system with predictable results. The fact that a
23 person with ordinary skill in the art has not created a system combining
24 Ludwig and e-Focusgroups.com does not render the combination of these
25 references nonobvious. The fact that Ludwig only describes the use of
26 internal LANs and WANs does not preclude a person with ordinary skill in

1 the art from recognizing that the combination of a system that uses the
2 Internet would not be predictable. As such, the Appellant's arguments are
3 not found to be persuasive.

4 The Appellant also contends that e-Focusgroups.com describes back and
5 forth written correspondences, but fails to describe a system where the
6 moderator and participants see each other and verbally communicate. App.
7 Br. 11 and Reply Br. 2. The Appellant also argues that e-Focusgroups.com
8 fails to describe live ongoing audio/visual study without the participants
9 knowing that they are being watched by the client unobtrusively. App. Br.
10 12. We disagree with the Appellant.

11 e-Focusgroups.com describes a system that provides audiotaping and
12 videotaping capabilities. FF 04. e-Focusgroups.com further describes
13 providing access to research facilities that are set up for remote video if
14 clients wish to view the interviews in real-time but cannot be physically
15 present. FF 04. As such, e-Focusgroups.com not only describes the use of
16 written correspondences between participants and a moderator, but also
17 describes the use of audio/visual equipment to allow real-time audio and
18 visual communication between participants and the moderator.

19 The Appellant additionally provides secondary evidence of copying by
20 others to rebut the prima facie case of obviousness and argues that the
21 Examiner has failed to give any weight to this evidence. App. Br. 14-16 and
22 Reply Br. 2-4. The Examiner responded to this argument at Answer 21. We
23 agree with and adopt the Examiner's findings of fact and analysis, and reach
24 the same legal conclusions as in that response. We further find that the
25 Appellant has failed to specifically point to where in Exhibits A and B there

1 is evidence of copying and has failed to provide a nexus between these
2 exhibits and the claims. After evaluating and weighing all of the evidence
3 relied upon by the Examiner and provided by the Appellant, we find that the
4 Appellant's evidence is not sufficient to rebut the Examiner's *prima facie*
5 case of obviousness

6

7 *Claims 5 and 14 rejected under 35 U.S.C. § 103(a) as unpatentable over*
8 *Ludwig, e-Focusgroups.com, and Thomas*

9 The Appellant contends that claims 5 and 14 are allowable for the same
10 reasons asserted in support of claim 22 *supra*. App. Br. 16. We disagree
11 with the Appellant. The Appellant's arguments in support of claim 22 and
12 other independent claims were not found to be persuasive *supra* and are not
13 found to be persuasive here for the same reasons.

14 The Appellant also contends that there is no motivation to combine
15 Ludwig, e-Focusgroups.com, and Thomas because there is no motivation to
16 pay employees additional compensation for attending a conference that they
17 are already getting paid to attend. App. Br. 16. We disagree with the
18 Appellant. Ludwig and e-Focusgroups.com are concerned with a secure
19 system allowing for collaboration and research between a moderator and
20 participants, as discussed *supra*. As also discussed *supra*, the combination
21 of Ludwig and e-Focusgroups.com would have been predictable. Thomas is
22 also concerned with effective, less cumbersome methods of conducting
23 surveys. FF 05. Thomas solves this concern by describing an efficient
24 electronic survey method and providing incentives to potential participants
25 to participate in the survey. FF 05. A person with ordinary skill in the art

1 would have recognized the benefits of including more effective electronic
2 surveying method and providing incentives to potential participants as
3 described by Thomas and combining these features to Ludwig and e-
4 Focusgroups.com. As such, it would have been obvious to a person with
5 ordinary skill in the art to combine Ludwig, e-Focusgroups.com, and
6 Thomas and such a combination would have had predictable results.

7
8 *Claims 10, 15, and 17 rejected under 35 U.S.C. § 103(a) as unpatentable*
9 *over Ludwig, e-Focusgroups.com, and Davis*

10 The Appellant contends that claims 10, 15, and 17 are allowable for the
11 same reasons asserted in support of claim 22 *supra*. App. Br. 17. We
12 disagree with the Appellant. The Appellant's arguments in support of claim
13 22 and other independent claims were not found to be persuasive *supra* and
14 are not found to be persuasive here for the same reasons.

15
16 CONCLUSIONS OF LAW

17 The Examiner did not err in rejecting claims 1, 7, 12-13, 16, 18, 21-22,
18 24-26, 32-33, 35-36, 40-42, 44-52, and 54-58 under 35 U.S.C. § 103(a) as
19 unpatentable over Ludwig and e-Focusgroups.com.

20 The Examiner did not err in rejecting claims 5 and 14 under 35 U.S.C.
21 § 103(a) as unpatentable over Ludwig, e-Focusgroups.com, and Thomas.

22 The Examiner did not err in rejecting claims 10, 15, and 17 under 35
23 U.S.C. § 103(a) as unpatentable over Ludwig, e-Focusgroups.com, and
24 Davis.

DECISION

To summarize, our decision is as follows.

- The rejection of claims 1, 7, 12-13, 16, 18, 21-22, 24-26, 32-33, 35-36, 40-42, 44-52, and 54-58 under 35 U.S.C. § 103(a) as unpatentable over Ludwig and e-Focusgroups.com is sustained.
- The rejection of claims 5 and 14 under 35 U.S.C. § 103(a) as unpatentable over Ludwig, e-Focusgroups.com, and Thomas is sustained.
- The rejection of claims 10, 15, and 17 under 35 U.S.C. § 103(a) as unpatentable over Ludwig, e-Focusgroups.com, and Davis is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

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Address

DANIEL S. POLLEY, P.A.

7251 WEST PALMETTO PARK ROAD, SUITE 202

BOCA RATON FL 33433